

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
CIVIL APPEAL NO. WA-12BNCVC-174-11/2016

BETWEEN

1. LYE ENG ENG
2. CHIA YU CHI (F) ... APPELLANTS

AND

HO KEE JIN RESPONDENT

(In the Matter of Civil Suit No. WA-B53F-10-03/2016 in the Sessions
Court at Kuala Lumpur

BETWEEN

1. LYE ENG ENG
2. CHIA YU CHI (F) ... PLAINTIFFS

AND

HO KEE JIN ... DEFENDANT

FOUNDATIONS OF JUDGMENT

1. This appeal arises out of a defamation action. These are my grounds in respect of an appeal by the plaintiffs who are dissatisfied with the decision of the Sessions Court which handed down an award of damages in the sum of RM10,000.00 and declined to make any order of costs in their favour. The decision of the Sessions Court is dated 25 October 2016. I shall refer to the parties by their original titles, that is, first and second appellants as “**first and second plaintiffs**” respectively and respondent as “**the defendant**”.

2. Although in the court below, the first plaintiff and the second plaintiff had filed the action in defamation, the sting of the impugned publications was entirely directed at the first plaintiff. The impugned publications were contained in four emails which were sent by the defendant to at least 23 individuals, including the children of the plaintiffs. Before the commencement of the trial, the defendant admitted liability. Thus, the trial was only in respect of assessment of the quantum of damages.

3. The background to the matter and the genesis of the four impugned emails may be culled from the following paragraphs of the statement of claim and they are as follows:-

Statement of Claim

- “1. The first plaintiff is a businessman and a manager of a company called Audio Video Security Works Sdn Bhd, a member of Malaysian Crime Prevention Foundation, of 60A Jalan Bunga Tanjung 10, Taman Muda, 56100 Ampang Selangor Darul Ehsan and the second plaintiff is a wife of the first plaintiff presently residing at A15A-A05 Armanee Terrace, Damansara Perdana, 47820 Petaling Jaya, Selangor Darul Ehsan and at all material times were a family friend of the defendant.
2. The defendant is a businessman residing at 50, Jalan Kenanga SD 9/8, Bandar Seri Damansara 52200 Kuala Lumpur.
3. The plaintiffs and the defendant together with other family friends used to go to Hat Yai, Thailand for a break and the first of such trips was sometime in November, 2008 and no arrangements were made with regard to expenses formal or otherwise between the parties and every body was happy and enjoyed each other's company and the experience lingered on.
4. It was on this experience and arrangement that a second trip to Hat Yai was executed on the basis of the previous trip during the Chinese New Year in 2009 and as customary in our society and between friends no arrangements formal or otherwise were made pertaining to expenses incurred either individually or as a group either before during or at the end of each trip and instead each of them took turn to meet the group expenses and everybody enjoyed this second trip like the previous one in our individual way and everybody appeared to be happy and this mood is portrayed when they dispersed after each sojourn.

5. Unlike the first trip shortly after this second trip, the defendant out of the blue demanded from the first plaintiff a disbursement in the sum of RM4,900.00 as expenses for the second trip purportedly advanced by him and this demand took the plaintiffs by surprise.
 6. The first plaintiff at first ignored these demands as baseless and ridiculous on account that the first plaintiff had expended equal amount or even more and the number of times the first plaintiff chipped-in have not been taken into consideration but the defendant was adamant and continued to press for reimbursement and repayment.
 7. The first plaintiff responded numerous times to these demands by asking him to forward bank account number and the break down of the reimbursement in particular on virtualling through an e-mail and he refused to oblige instead he threaten to publish his demand by e-mail to friends.
 8. The defendant, instead of meeting the first plaintiff's requests, turned to the second plaintiff and demanded on the telephone that she should reimburse and repay him on behalf of her husband and each time not only the sum demanded varied but the language changed from aggressive to nasty and when the second plaintiff asked for details the defendant turned mute.”
4. I turn now to the defendant's email which was sent to the plaintiffs' children - Gareth Lye and Julian Lye:-

“Date : Monday, October 12, 2009, 7.34 PM

Hi Gareth & Julian

This is uncle Jin, the friend of your fathers for over 30 yrs whom we went to hatyai last CNY. You must be wondering why I'm writing you this email. I want to tell u a TRUE story of LIES, DECEIT. MANIPULATION & BETRAYAL. I'm talking about your FATHER - Alex Lye Eng Eng. your father owes me a total of rm4945 & is now avoiding me. Over a year ago your father came to

me to borrow rm2.5K which I loan him without hesitation. He promise to repay me in a months time, when he didn't I kept reminding him but no repayment.

.....

On hindsight its all has been LIES, DECEIT & BETRAYAL, it was all plan. A 30 yrs friendship does not mean a shit to your father, he took advantage & abuse it.

The material comfort that your father is providing for u guys are partly STOLEN tentatively. I dont know what is going on his mind right now, maybe hes thinking of upgrading to become a THIEF. If you guys don't have any guilty feelings, then you are not humans. You guys are living in a rm700K house, talk about the rich stealing from the poor.

If your father tells u what I'm saying are all lies, I dare your father to tell me in front of my face & in front of his family.

Yes! That's your father - Alex Lye Eng Eng – a THIEF!!!

Uncle Jin”

5. Thereafter the defendant circulated an email to the first plaintiff's friends and business associates. In this regard, I shall refer to paragraph 8.2 of the statement of claim which reads as:-

“8.2 The matter came to a head when he made his major second publication to include third parties beyond the family perimeter in particular to the first plaintiff's business associates, relatives and mutual friends and true to his words:”

6. The email that was referred to in paragraph 8.2 of the statement of claim reads as:-

"To all acquaintance of Alex Lye Eng Eng,

BEWARE! BEWARE! BEWARET Theres is a LYING THIEF among us. Read about a True Story of LIES, DECEIT, MANIPULATION & BETRAYAL below. Yes! hes Alex Lye Eng Eng, who lives in a rm700k house.

.....
Alex, I remembered u told me about Maggie (your wifes friend) how your wife introduce her a friend & the guy cheated/stole rm6k from Maggie, how ironic that you told me that. I think u should keep your F..... mouth shut. BACKSTABBER!!!

You are no different from the guy, THIEF!
Are you a good role model for your children?',

Jin"

7. After a full trial, the learned Sessions Judge awarded damages in the sum of RM10,000.00 and made no order as to costs. The plaintiffs are dissatisfied and hence this appeal. Before me, counsel for the plaintiffs submitted that the learned Sessions Judge had not fully appreciated the factual narrative of this case and did not give proper weight to the seriousness of the defamatory publications and/or the extent of publication.

8. As such, counsel argued that the learned Sessions Judge did not adhere to the relevant legal principles which should guide the court's discretion when assessing damages so as to compensate the first plaintiff for the harm that was occasioned by the highly defamatory imputations contained in the four emails which were circulated to all those who mattered to the first plaintiff.
9. Having heard the submissions of counsel in this matter, I am satisfied that there was a misdirection by the learned Sessions Court Judge in terms of her evaluation of the impugned publications, namely the contents of the four impugned emails which were circulated to at least 23 individuals including the children of the plaintiffs.
10. In my view, the factors which the court ought to have taken into consideration (but failed to do so) are those which are mentioned by the Federal Court in *Ling Wah Press (M) Sdn Bhd v Tan Sri Dato' Vincent Tan Chee Yioun* [2000] 3 CLJ p.728; [2000] 4 MLJ 77, where it was enunciated that in assessing damages the court must have regard to *inter-alia* – “the gravity of the libel” – which has been described by Sir Thomas Bangam in *John v MGN* [1997] QB 586 at 607 as “the most important” factor. The relevant passages from the judgment of the Federal Court are as follows:-

“We find that we cannot compare a particular libel case with other libel cases. Each libel case has its own particular and peculiar facts, is unique and a class by itself. We cannot by our judgment set a precedent on the damages to be awarded. The court must consider a number of factors when assessing damages in a libel case. In *John v MGN Ltd* [1997] QB 586 at p 607, Sir Thomas Bingham MR (now CJ) said:

In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it (the defamation) touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place.

Damages in defamation cases are described as being at large. The law has not fixed any exact measure for assessment of damages in an action for defamation. There is no mathematical formula by which the quantum can be determined; nor is there any requirement that the damages be assessed with mathematical certainty. But a small sum awarded to a prominent public figure for a serious libel could be interpreted as trivialising the incident.”

11. Hence, if the libel impugns the first plaintiff's integrity, then it is more serious. The next important factor is the extent of publication. In the present case, the defendant was clearly minded to impugn the first plaintiff's reputation by sending the emails to those who mattered most to him, namely, his children, his friends and business associates.

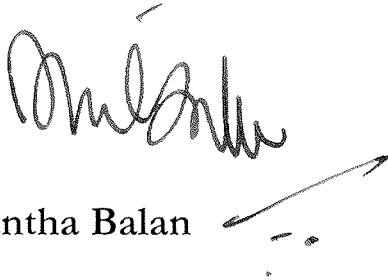
12. The words used by the defendant in his emails are vicious, venomous and vituperative to say the least. There was no self restraint at all. The defendant did all of these because he was upset that the first plaintiff had refused to pay a sum of RM4,959.00 which was incurred by the defendant whilst he was with the plaintiffs on holiday in Hatyai, Thailand. The defendant filed a claim for this amount in the Small Claims Court and his claim was dismissed.

13. In all the circumstances, it is clear that although the learned Sessions Court Judge had alluded to the relevant legal principles in the grounds of judgment, those principles were not applied as they ought to have been. In the result, I am satisfied that there was a misdirection on the part of the learned Sessions Court Judge. I am wholly cognisant of the principle that generally an appellate court should not disturb an award of damages merely because this court would have decided differently. But appellate interference is warranted and justified when the grounds of judgment demonstrates a lack of judicial appreciation for the severity of the defamatory words and the extent of publication that was deliberately undertaken by the defendant.

14. A such, the appeal here has merit and the damages of RM10,000.00 that were awarded was totally and manifestly inadequate. I am also unable to fathom the reasons, if any, for the refusal of the Sessions Court to award costs to the plaintiffs. I accept that the second plaintiff has no leg to stand on as the impugned words were all attributed to the first plaintiff.
15. In my view, the quantum of damages *vis-à-vis*, the first plaintiff should be enhanced to reflect the gravity of the impugned words which clearly maligns the first plaintiff in terms of his integrity and honesty. The fact that the emails were circulated to 23 persons also aggravates the situation and attracts a higher award of damages.
16. In the result, the first plaintiff's appeal is allowed with costs. I hereby set aside the order of the Sessions Court dated 25 October 2016 and substitute it with an order that the defendant do pay damages to the first plaintiff in the sum of RM35,000.00 with interest at 5% per annum from 15 July 2010 until the date of payment or realization and costs of RM12,000.00 (subject to 4% allocatur) as costs here and below. The deposit is refunded to the plaintiffs.

Order accordingly.

Date: 22 March 2017



S. Nantha Balan
Judge
High Court
Kuala Lumpur

Counsel:

Dato' Shamsul Bahrain Bin Ibrahim (*Messrs Bahrain*) for the Appellants/Plaintiffs.

Albert Ewe (*Messrs Ewe Chong & Khoo*) for the Respondent/Defendant.

Cases:

Ling Wah Press (M) Sdn Bhd v Tan Sri Dato' Vincent Tan Chee Yioun [2000] 3 CLJ p.728; [2000] 4 MLJ 77 FC

John v MGN [1997] QB 586 at 607